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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,086	08/31/2001	Eric L. Boyd	26564-2	3146

7590 02/24/2005
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EXAMINER

BAROT, BHARAT

ART UNIT PAPER NUMBER

2155

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/945,086

Applicant(s)

BOYD ET AL.

Examiner

Bharat N Barot

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-16 is/are rejected.
- 7) ☒ Claim(s) 11, 12, 17 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Drawings

2. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 112, 2d paragraph

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.
4. Claims 1-8, 10-12, and 17-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
The following terms lack proper antecedent basis:

- the site, the computer, the time, and the measured data—claim 1;
- the probing software—claim 2;
- the probing client computer--claim 5;
- the client computer—claim 7;
- the probing software, the operating system, and the connection type—claim 10;
- the current time—claim 11;
- the last time--claim 16; and
- the current time--claims 17.

All claims that depend thereon are also hereby considered rejected.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-10 and 13-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Merriam (U.S. Patent No. 6,587,878). Merriam's patent meets all the limitations for claims 1-10 and 13-16 recited in the claimed invention.

7. As to claim 1, Merriam teaches a method of evaluating the performance of a web site by measuring web site performance through the use of probing computers accessing the web site (abstract; and figure 1), the method comprising: providing executable probing instructions to probing computer, the probing instructions causing the probing computer to measure a time to download a specified Web page and report the measurement data (time) to a processing computer (figures 1-2; and column 5 lines 11-20 and 27-37).

8. As to claims 2-3, Merriam teaches that the step of providing the probing instructions to the probing computer includes embedding a probing software in the HTML of the Web page, wherein the probing software is an additional attribute to one tag of the specified Web page HTML (figure 1; and column 3 line 54 to column 4 line 21).

9. As to claims 4-5, Merriam teaches that the probing instructions include a first bit of interpretive probing script that starts a timer, a second bit of interpreting probing script that stops the timer after all of the Web site HTML and embedded objects are downloaded by the probing computer and calculates the length of time to download the

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Web page, and a third bit of interpreted probing script that causes a client computer to report the measured time interval to a processing computer, wherein the third bit of interpreted probing script is further configured to report available client characteristics of the probing client computer to the processing computer (figure 3; and column 6 line 18 to column 8 line 3).

10. As to claim 6, Merriam teaches that the reported data is tagged with an identifier for the specified Web page (column 7 line 48 to column 8 line 3).

11. As to claim 7, Merriam teaches that the step of providing the probing instructions to the probing computer includes communicating probing software from a central server to a client computer (figure 1; and column 3 line 54 to column 4 line 21).

12. As to claim 8, Merriam teaches that the steps of analyzing the measurement data and communicating display data to a display engine for user display in graphical form (figure 2; column 4 lines 39-53; and column 5 line 37 to column 6 line 16).

13. As to claim 9, Merriam teaches a method of probing a Web site to produce measurement data representative of the web site performance using a plurality of distributed client computers and a central server (abstract; figure 1; and column 4 line 39 to column 5 line 20), comprising: communicating a request for work from a client computer to the central server; selecting a work packet for the client computer, the work

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packet including a work set identifying a Web site for the client computer to probe; using the client computer to download the identified Web site and record performance measurement data relating to the Web site download; communicating the performance measurement data to the central server; and recording the performance measurement data in a searchable database (figure 3; and column 6 line 18 to column 7 line 47).

14. As to claim 10, Merriam teaches that the step of the client computer reporting client computer characteristics to the central server, the client computer characteristics including one or more of the geographic locations of the client computer, an identification of the configuration commands, an identification of the probing software, the operating system of the client computer, and the connection type of the client computer (column 4 line 22 to column 5 line 20; and column 8 lines 4-47).

15. As to claim 13, Merriam teaches that the step of the central server storing the performance data received from the client computers in a performance database (figures 2 and 6; column 5 line 46 to column 6 line 16; and column 11 lines 22-51).

16. As to claim 14, Merriam teaches that the central server further includes a data analysis user interface, a data display engine, a data analysis engine communicating with the performance database and the data display engine, and the data analysis user interface communicating with the data analysis engine for receiving a data display and displaying the data display to a user, and further including the steps of selecting

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analysis options using the data analysis user interface, generating a data display through the data display engine, and displaying the data display to the user through the data analysis user interface (figures 2-3; column 5 line 27 to column 8 line 3).

17. As to claim 15, Merriam teaches that the step of communicating probing software to the client computer, the probing software including an executable program that causes the client computer to download a predetermined Web page and configuration commands to prioritize the running of the probing software on the client computer relative to other process (figures 1-2; and column 3 line 54 to column 6 line 16).

18. As to claim 16, it is also rejected for the same reasons set forth to rejecting claims 9-10, 13, and 15 above, since claim 16 is merely an apparatus for the method of operation defined in the claims 9-10, 13, and 15.

Allowable Subject Matter

19. Claims 11-12 and 17-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Additional References

20. The examiner as of general interest cites the following references.
- a. Jennings, III et al, U.S. Patent No. 6,760,763.
 - b. Spicer et al, U.S. Patent No. 6,591,298.
 - c. Landan, U.S. Patent No. 6,449,739.
 - d. Killian, U.S. Patent No. 6,438,592.

Contact Information

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bharat Barot whose telephone number is (571) 272-3979. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alam, Hosain, can be reached at (571) 272-3978.

Any inquiry of general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 305-3900.

Patent Examiner Bharat Barot

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February 11, 2005


BHARAT BAROT
PRIMARY EXAMINER